

All Plaintiffs, State Defendants and Defendant Intervenors

In order to ensure that their live testimony at a trial starting September 27, 2023 does not interfere with defendant county election officials' duties to administer the upcoming General Election, Plaintiffs, State Defendants and Defendant Intervenors commit to the following:

1. For each defendant county election official who is subpoenaed to testify at the trial, that county election official shall appear on or before October 6, 2023. State Defendants and Defendant-Intervenors may subpoena defendant county election officials to testify during this period even if Plaintiffs have not yet completed their case in chief. Hours of testimony by defendant county election officials will be split evenly between the combination of Private Plaintiffs and the United States and the combination of State Defendants and Intervenors.
2. A subpoenaed defendant county election official shall testify on one day, unless testimony the following day is necessitated by the end of proceedings on the day that the defendant county election official is called to testify.
3. A subpoenaed defendant county election official shall be examined by all parties at the time the official is called to testify (including direct examination, cross examination and rebuttal), and the official shall not be recalled to testify during the remainder of the trial by any party.
4. Defendant county election officials shall reserve the right to request additional accommodations from the Court, including the ability to testify at trial by contemporaneous transmission from a different location.

Defendant El Paso County Elections Administrator Lisa Wise

Defendant El Paso County Elections Administrator Lisa Wise is amenable to both of the proposed schedules filed by the parties (ECF Nos. 571, 572), and does not take a position as between them.

Proposal by Defendant Counties Bexar, Dallas, Hidalgo and Travis

If the trial is scheduled to start on September 27, 2023, then, with respect to trial testimony, the parties agree that, for each county election official who is subpoenaed to testify at the trial, that county official shall appear in court, or at the county witnesses' option (with the exception of Bexar County), appear by contemporaneous transmission from a different location, on or before October 4, 2023. If the trial is scheduled to start on September 12, 2023, then, with respect to trial testimony, the parties agree that, for each county official who is subpoenaed to testify at trial, that county official shall appear in court, but shall reserve the right to request additional accommodations from the Court, including the ability to testify by contemporaneous transmission from a different location, on or before October 4, 2023. State Defendants and Defendant-Intervenors may subpoena county election officials during this period even if Plaintiffs have not yet completed their case in chief.

Defendant Harris County Elections Administrator Clifford Tatum

Defendant Harris County Elections Administrator Clifford Tatum is amenable to both of the proposed trial schedules as long as his or his employees' trial testimony (no matter which party calls him or his employees as witnesses) occurs on or before October 4, 2023. He reserves the right to request that any Harris County Elections Administrator's employee who receives a trial subpoena appear by contemporaneous transmission. Harris County Elections Administrator

Clifford Tatum opposes any schedule that would require him or his employees to testify after October 4, 2023.

AREAS OF AGREEMENT WITH RESPECT TO PRE-TRIAL MATTERS

The parties agree on the following points.

1. Consistent with their representations to the Court in the hearing of March 7, 2023, the parties agree that they will not propound additional written discovery on the county election officials unless the county election officials first agree to the written discovery. Tr. 39:9-13.
2. Consistent with their representations to the Court in the hearing of March 7, 2023, the parties agree that questioning in depositions of the county election officials will be relevant, non-redundant, and as unobtrusive as possible. Tr. 28: 22-24.
3. The parties agree that in the discovery period that remains in this case, each county election official will be deposed no more than once, regardless of the type of deposition.
4. Notwithstanding the fifteen-day deadline for filing designations of rebuttal experts and serving the materials required by Fed. R. of Civ. P. 26(a)(2)(B), the parties agree that such designations and materials are due on April 5, 2023, with regard to Dr. Kenneth R. Mayer.
5. All parties agree that depositions occurring on or after October 24, 2022, that did not count against the Court's previous "Primary Election Discovery" are limited to 70 hours combined for all Private Plaintiffs and the United States and 70 hours combined for State Defendants and Intervenors. Time will be calculated using the total record time spent by each side questioning a witness, regardless of which side noticed the deposition.
6. The parties agree to keep open the depositions of experts for the purposes of supplemental reports, whereby any additional deposition taking place after the close of discovery will be

limited solely to the content of any supplemental report, and not be used to reopen any deposition as to the content of general expert reports except to the extent that a supplemental report has altered or amended the content of such general reports.

Dated: March 29, 2023

Respectfully Submitted,

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The undersigned counsel hereby certifies that she has electronically submitted a true and correct copy of the above and foregoing via the Court's electronic filing system on the 28th day of March 2023.

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